IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.187 OF 2004

1. Union of India, through
Secretary to the Govt.of India,
Ministry of Personnel,
Public Grievances & Pensions,
3rd floor, Loknayak Bhavan,
New Delhi - 110 003.

2. Accountant General (A&E)-I,
Maharashtra, Maharshi Karve Road,
Churchgate, Mumbai 400 020. .. Petitioners

v/s.

T.Mukundan, s/o.Late O.Govinda Puduval,
Resident of Mumbai and last empoyed
as Accountant Officer,
Office of the Accountant General
(A-E) I, Maharashtra, Churchgate,
Mumbai 400 020. .. Respondent

Mr.Suresh Kumar with Ms.S.R.Kambli i/by
Mr.T.C.Kaushik for the petitioners.

Mr.R.R.Dalvi for respondent.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 29th March, 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

The issue that arises for consideration in this writ petition is, whether Rule 48-B of Central Civil Services Pension Rules, 1972 (for short, 'CCS Pension Rules, 1972') providing for weightage of five years in qualifying service on voluntary retirement which took effect from 10th September, 1983 would also be applicable to the employees who took voluntary retirement before 10th September, 1983.

2. The aforesaid issue arises in the facts and circumstances that we may briefly notice here.

(i) T.Mukandan-the respondent joined service in the employment of the Central Government on 4.9.1952. He retired voluntarily as Accounts Officer on 20.9.1979. At the time of voluntary retirement, he had rendered the service of 27 years and 20 days. He was granted pensionary benefits taking into account his qualifying service at the time of retirement as per Rule 48-A of the CCS Pension Rules, 1972.

(ii) Rule 48-B was inserted in CCS Rules, 1972 vide notification No.32/4/83-Pension Unit dated 28th August, 1983. The newly added Rule 48-B took effect from 10th September, 1983.

(iii) The respondent herein in the light of newly added Rule 48-B claimed benefit thereunder and requested for recomputation of his pension by according him weightage of five years of qualifying service.

(iv) The claim of the respondent ultimately came to be rejected by the order dated 2.4.2002 by the Secretary to the Government of Maharashtra, Ministry of Personnel, Public Grievances and Pensions holding

that he was not entitled to the benefits of Rule 48-B.

(v) The respondent challenged the order dated 2.4.2002 by filing original application No.579/2002 before the Central Administrative Tribunal (for short, 'the CAT'). Before the CAT, the present petitioners reiterated their stand that the present respondent was not entitled to the benefit claimed by him under Rule 48-B of CCS Pension Rules, 1972 since Rule 48-B is applicable prospectively and not retrospectively.

(vi) The CAT heard the parties and vide order dated 29.8.2003 held that the present respondent was entitled to the benefit of Rule 48-B of CCS Pension Rules, 1972 and directed the present petitioners to pay the arrears of pension to him within four months from the date of the order.

3. It is not in dispute that the respondent retired voluntarily on 29.9.1979 and at the time of his retirement, he rendered the service of 27 years and 20 days. At the time of the retirement of the respondent, the existing rule 48-A provided for retirement on completion of 20 years qualifying service. Rule 48-A of the CCS Pension Rules, 1972 reads thus-

"**48-A. Retirement on completion of 20 years' qualifying service.**

(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service.

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is-

(i) on assignments under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid programmes.

(ii) posted abroad in foreign based offices of the Ministries /Departments,

(iii) on a specific contract assignment to a foreign Government, unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the Appointing Authority:

Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3-A)(a) A Government servant referred to in sub-rule (1) may make a request in writing to the Appointing Authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) On receipt of a request under Clause (a), the Appointing Authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits

and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the Appointing Authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the Appointing Authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement.

(5) The pension and [retirement gratuity] of the Government servant retiring under this rule shall be based on the emoluments as defined under Rules 33 and 34 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.

(6) This rule shall not apply to a Government servant who-

(a) retires under Rule 29, or

(b) retires from Government service for being absorbed permanently in an Autonomous Body or a Public Sector Undertaking to which he is on deputation at the time of seeking voluntary retirement.

EXPLANATION.- For the purpose of this rule, the expression "Appointing Authority" shall mean the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement."

4. It is also an admitted position that as per the

aforesaid Rule 48-A, the pension payable to the present respondent was computed and he has been paid pension accordingly.

5. Rule 48-B was inserted in CCS Pension Rules by notification dated 26th August, 1983 and that took effect from 10th September, 1983. The newly added Rule 48-B reads thus-

> **"48-B. Addition to qualifying service on voluntary retirement**
>
> (1) The qualifying service as on the date of intended retirement of the Government servant retiring under Rule 48(1) (a) or Rule 48-A or Clause (k) of Rule 56 of the Fundamental Rules or Clause (i) of Article 459 of the Civil Service Regulations, with or without permission shall be increased by the period not exceeding five years, subject to the condition that the total qualifying service rendered by the Government servant does not in any case exceed thirty-three years and it does not take him beyond the date of superannuation.
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> (2) The weightage of five years under sub-rule (1) shall not be admissible in cases of those Government servants who are prematurely retired by the Government in the public interest under Rule 48(1)(b) or FR 56(j).]

6. By Rule 48-B, the weightage of five years of qualifying service has been made admissible to the Government servant retiring under Rule 48(1)(a) or Rule 48-A or Clause (k) of Rule 56 of the Fundamental Rules or Clause (i) of Article 449 of Civil Service Regulations.

7. The concept of non-contributory pension has been elaborately dealt with and eloquently explained by the Constitution Bench of the Supreme Court in the case of D.S.Nakara and others v. Union of India, (1983) 1 SCC 305. In paragraph 19 of the report, the Supreme Court posed the questions: what is a pension? what are the goals of pension? what public interest or purpose, if any, it seeks to serve?..... and then proceeded to observe thus-

> "20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh.
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> 27. Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But

broadly stated they are (i) as compensation to former members of the Armed Forces or their dependents for old age, disability, or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian employees, and (iii) as social security payments for the aged, disabled, or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude. There are other views about pensions such as charity, paternalism, deferred pay, rewards for service rendered, or as a means of promoting general welfare (see Encyclopaedia Britannica, Vol.17, p.575).
But these views have become otiose.

29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred potion of the compensation or for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to
fall back upon.

31. From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon

the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to 10 months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.

36. Having set out clearly the society which we propose to set up, the direction in which the State action must move, the welfare State which we propose to build up, the constitutional goal of setting up a socialist State and the assurance in the Directive Principles of State Policy especially of security in old age at least to those who have rendered useful service during their active years, it is indisputable, nor was it questioned, that pension as a retirement benefit is in consonance with and in furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security of cradle to grave is assured at least when it is mostly needed and least available, namely, in the fall of life.

46. By our approach, are we making the scheme retroactive? The answer is emphatically in the negative. Take a government servant who retired on April 1, 1979. He would be governed by the liberalised pension scheme. By that time he had put in qualifying service of 35 years. His length of service is a relevant factor for computation of pension. Has the

Government made it retroactive, 35 years backward compared to the case of a government servant who retired on March 30, 1979? Concept of qualifying service takes note of length of service, and pension quantum is correlated to qualifying service. Is it retroactive for 35 years for one and not retroactive for a person who retired two days earlier. It must be remembered that pension is relatable to qualifying service. It has correlation to the average emoluments and the length of service. Any liberalisation would pro tanto be retroactive in the narrow sense of the term. Otherwise it is always prospective. A statute is not properly called a retroactive statute because a part of the requisites for its action is drawn from a time antecedent to its passing (see Craies on Statute Law, 6th Edn., p.387). Assuming the Government had not prescribed the specified date and thereby provided that those retiring pre and post the specified date would all be governed by the liberalised pension scheme, undoubtedly, it would also be governed by the liberalised pension scheme, undoubtedly, it would be both prospective and retroactive. Only the pension will have to be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised scheme comes into force. And beware that it is not a new scheme, it is only a revision of existing scheme. It is not a new retiral benefit. It is an upward revision of an existing benefit. If it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it. It could have been urged that it is an incentive to attract the fresh recruits. Pension is a reward for past service. It is undoubtedly a condition of service but not an incentive to attract new entrants because if it was to be available to new entrants only, it would be prospective at such distance of thirty-five years since its introduction. But it covers all those in service who entered thirty-five years back. Pension is thus not an incentive but a reward for past service. And a pension of an existing benefit stands on a different footing that a new retiral benefit. And even in case of new retiral benefit of gratuity under the Payment of Gratuity Act, 1972 past service was taken into consideration. Recall at this stage

> the method adopted when pay scales are revised. Revised pay scales are introduced from a certain date. All existing employees are brought on to the revised scales by adopting a theory of fitments and increments for past service. IN other words, benefit of revised scale is not limited to those who enter service subsequent to the date fixed for introducing revised scales but the benefit is extended to all those in service prior to that date. This is just and fair. Now if pension as we view it, is some kind of retirement wages for past service, can it be denied to those who retired earlier, revised retirement benefits being available to future retirees only. Therefore, there is no substance in the contention that the court by its approach would be making the scheme retroactive, because it is implicit in theory of wages."

8. The judgment in the case of D.S.Nakara has come up for consideration before the Supreme Court time and again. In Krishena Kumar v. Union of India and ors., (1990)4 SCC 207, the Supreme Court with regard to D.S.Nakara in paragraphs 32 and 33 of the report observed thus-

> "32. In Nakara it was never held that both the pension retirees and the PF retirees formed a homogeneous class and that any further classification among them would be violative of Article 14. On the other hand the court clearly observed that it was not dealing with the problem of a "fund". The Railway Contributory Provident Fund is by definition a fund. Besides, the government's obligation towards an employee under CPF Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the government's obligation does not begin until the employee retires when only it begins and it continues till the death of

the employee. Thus, on the retirement of an employee government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to PF retirees. This being the legal position the rights of each individual PF retiree finally crystallized on his retirement whereafter no continuing obligation remained while, on the other hand, as regard Pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the PF retirees they would not be so adversely affected ipso facto. It cannot, therefore, be said that it was the ratio decidendi in Nakara that the State's obligation towards its PF retirees must be the same as that towards the pension retirees. An imaginary definition of obligation to include all the government retirees in a class was not decided and could not form the basis for any classification for the purpose of this case. Nakara cannot, therefore, be an authority for this case.

33. Stare decisis et non quieta movere. To adhere to precedent and not to unsettle things which are settled. But it applies to litigated facts and necessarily decided questions. Apart from Article 14 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. A deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. It should be invariably applied

> and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless considerations of public policy demand it. But in Nakara it was never required to be decided that all the retirees formed a class and no further classification was permissible."

Krishena Kumar was the case of PF retiree. The Constitution Bench of the Supreme Court held in Krishena Kumar that PF retirees and pension retirees are two different classes and what was said in D.S.Nakara for the pension retirees would not be applicable to PF retirees. The Supreme Court observed that an imaginary definition of obligation to include all the government retirees in a class was not decided and could not form the basis for any classification for the purpose of the

case in hand (Krishena Kumar).

9. In Indian Ex-Services League and ors. v. Union of India, (1991) 2 SCC 104, the Constitution Bench of the Supreme Court again considered the case of D.S.Nakara at quite some length since it was found that the matter was sequel to the decision in D.S.Nakara. The Constitution Bench after referring to the case of D.S.Nakara extensively, held that the case of D.S.Nakara has to be read as one of limited application and its ambit cannot be enlarged to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of

retirement, even though the reckonable emoluments for the purpose of computation of their pension would be different. The Constitution Bench, accordingly, with reference to the office memorandum dated May 25, 1979 issued by the Ministry of Finance, Government of India whereby the formula for computation of pension was made applicable only to the civil servants who were in service on March 31, 1979 and retired from service on or after that date was not interfered with. It was held that the claim made by the ex-servicemen was based on misreading of Nakara's decision. The legal position highlighted in D.S.Nakara that where the mode of computation of pension is liberalised from a specified date, its benefit must be given not merely to the retirees subsequent to that date but also to earlier existing retirees irrespective of their date of retirement even though the earlier retirees would not be entitled to any arrears prior to the specified date on the basis of the revised computation made according to the liberalised formula, however, was not disputed.

10. The legal position that the benefits on liberalisation and the extent thereof given in accordance with the liberalised pension scheme have to be given equally to all retirees irrespective of their date of retirement and those benefits cannot be confined only to the persons who retired on/or

after the specific date has not been deviated in the cases of Krishena Kumar and Indian Ex-Services League by the subsequent Constitution Benches. The case where new pension scheme comes into force from a particular date stands on a different footing and obviously, in that case the retirees who retired before the effective date of new scheme cannot claim benefit of the new pension scheme. The nature of change is decisive and determinative. If the change is change in mode of computation of existing pension resulting in upper revision of the existing pension scheme, as held in D.S.Nakara, the benefit must be given to all retirees whether they retired before the date of amendment or subsequent to that date. But if it is a new retiral benefit or a new scheme, the benefit thereof would be applicable to the retirees covered thereunder and cannot be made applicable with retrospective effect.

11. We now examine whether section 48-B that was inserted in CCS Pension Rules, 1972 with effect from 10.9.1983 is in the nature of change in mode of computation providing for liberalised pension of the existing pension scheme or it is in the nature of new retiral benefit or new scheme.

12. The title of new rule 48-B is, **'**Addition to qualifying service on voluntary retirement**'**. It

may not be decisive of the nature of provision made in Rule 48-B but when seen in the light of the body of the rule, it is immediately noticed that it provides for weightage or addition to qualifying service. Surely it is not a new pension scheme or a new retiral benefit given for the first time. By insertion of Rule 48-B, the weightage of five years of qualifying service is sought to be given to the Government servant interalia retiring under Rule 48-A. The length of service is always relevant factor for computation of the pension. Pension is relatable to qualifying service. Rule 48-A already provided for 20 years of qualifying service before voluntary retirement. By insertion of Rule 48-B, the weightage of five years of qualifying service is being given. The language of rule 48-B does not suggest that it intended to create a different class of voluntary retirees who retired after 10.9.1983 and those who retired before that date. By Rule 48-B, the mode of computation of pension to the voluntary retirees is liberalised from a specied date i.e. 10.9.1983. The ratio of D.S.Nakara is clearly applicable to the case in hand. Accordingly benefit of Rule 48-B must be given not only to the retirees who retire after 10.9.1983 but also those who retired earlier to 10.9.1983; though the retirees who retired earlier would not be entitled to any arrears prior to 10.9.1983 on the basis of revised computation based

on Rule 48-B.

13. The CAT relied upon the judgment of Supreme Court in V.Kasturi v. Managing Director, State Bank of India, Bombay and anr., 1999 SCC (L&S) 78. The said judgment may not be applicable as it is since the case of V.Kasturi, arose out of the contributory pension fund which is different from non-contributory pension scheme. The Supreme Court observed in V.Kasturi that the pension fund was different from the Government employees non-contributory pension scheme. In drawing that distinction in V.Kasturi, the Supreme Court relied upon para 45 of D.S.Nakara's judgment wherein it was observed thus-

> "45. Let us clear one misconception. The pension scheme including the liberalised scheme available to the government employees is non-contributory in character. It was not pointed out that there is something like a pension fund. It is recognised as an item of expenditure and it is budgeted and voted every year. At any given point of time there is no fixed or predetermined pension fund which is divided amongst eligible pensioners. There is no artificially created fund or reservoir from which pensioners draw pension within the limits of the fund, the share of each being co-extensive with the available fund. The payment of pension is a statutory liability undertaken by the Government and whatever becomes due and payable is budgeted for. One could have appreciated this line of reasoning where there is a contributory scheme and a pension fund from which alone pension is disbursed. That being not the case, there is no question of pensioners dividing the pension fund which, if more persons are admitted to the scheme, would pro rata affect the share. Therefore, there is no question of dividing the

> pension fund. Pension is a liability incurred and has to be provided for in the budget. Therefore, the argument of division of a cake, larger the number of sharers, smaller the share and absence of residue and therefore by augmentation of beneficiaries, pro rate share is likely to be affected and their absence making relief impermissible, is an argument born of desperation, and is without merits and must be rejected as untenable."

14. The principle that if the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to that enhanced pension or would become eligible for that more pension as per the new formula or computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such amendment is applicable to the case in hand. Before us is not the category of the case where the employee was not entitled to pension at the time the amended provision was introduced in the Pension Rules. On the other hand we have a case where the employee at the time of his retirement was eligible for pension and covered by Rule 48-A. The case would be different if by the subsequent amendment in law, the beneficial pension scheme is extended to cover a new class of pensioners. In that event the erstwhile non-pensioner would not be entitled to benefit of such new extended pension scheme. In our considered view Rule 48-B provides for revised mode

for computation of pension by according weightage of five years of qualifying service effective from 10.9.1983. We find no reason why the benefit of revised formula of according weightage of five years of qualifying service should not be admissible to the retirees who retired before 10.9.1983.

15. Mr.Suresh Kumar, the learned counsel for the petitioners, however, cited few judgments of the Supreme Court viz., (i) Commander Head Quarter, Calcutta and ors. v. Capt.Biplabendra Chanda, (1997)1 SCC 208, (ii) State of Punjab and ors. v. Boota singh and anr., (2000)3 SCC 733, (iii) Union of India v. P.N.Menon and ors., (1994)4 SCC 68 and (iv) State of Punjab v. Justice S.S.Dewan (Retired Chief Justice) and ors., (1997)4 SCC 569.

16. In the case of Commander Head Quarter, Capt.Biplabendra Chanda, was not eligible for pension as per the rules existing on the date of retirement and therefore, it was held that the new and revised rules were not applicable to him. The Supreme Court observed thus-

> "No pension was granted to the respondent because he was not eligible therefor as per the Rules in force on the date of his retirement. The new and revised Rules (it is not necessary for the purpose of this case to go into the question whether the Rules that came into force with effect from 1.1.1986 were new Rules or merely revised

> or liberalised Rules) which came into force with effect from 1.1.1986 were not given retrospective effect. The respondent cannot be made retrospectively eligible for pension by virtue of these Rules in such a case."

In the present case, the respondent was eligible for pension at the time of his voluntary retirement and in fact, he was granted pension taking into consideration the qualifying service as provided in Rule 48-A. Commander Head Quarter has no application to the facts of the present case.

17. In the case of Boota Singh, the Apex Court held thus-

> "7. On merits we find that the retirement benefits which are claimed by the respondent are benefits which are conferred by subsequent orders/notifications. Therefore, persons who retired after the coming into force of these notifications and order are governed by different rules of retirement than those who retired under the old rules and were governed by the old rules. The two categories of persons, who retired were governed by two different sets of rules. They cannot, therefore, be equated. Further, granting of additional benefits has financial implications also. Hence, specifying the date for the conferment of such additional benefits cannot be considered as arbitrary."

The aforesaid observations were made by the Supreme Court in the light of the notification dated 9.7.1985 and the circular dated 24.11.1988 whereby the benefits were only available to the retirees who retired after a particular date. The Supreme Court held that the two categories of

persons who retired were governed by two different set of rules and, therefore, cannot be equated. For what we have already discussed above, the judgment in the case of Boota singh is not applicable to the present case.

18. In the case of P.N.Menon, the issue was whether portion of dearness allowance which was to be treated as pay for the purpose of retirement benefits in respect of the Government servants who retired on/or after 30th September, 1977 as per office memorandum dated 25.5.1979 was applicable to the retirees who retired before 30th September, 1977. The Supreme Court held that the said office memorandum did not create the classification among the equals and therefore, the retirees who retired before 30th September, 1977 were not entitled to the benefits of dearness pay. The Supreme Court held that the date fixed in the office memorandum was an objective and based on rational considerations. P.N.Menon's judgment also cannot be applied to the case in hand.

19. In the case of Justice S.S.Dewan (Retired Chief Justice), the Supreme Court in paragraph 8 of the report observed thus-

> "8. Conceptually, pension is a reward for past service. It is determined on the basis of length of service and last pay drawn. Length of service is determinative of eligibility and the quantum of pension.

The formula adopted for determining last average emoluments drawn has an impact on the quantum of pension. In D.S.Nakara case the change in the formula of determining average emoluments by reducing 36 months' service to 10 months' service as measure of pension, made with a view to giving a higher average, was regarded as liberalisation or upward revision of the existing pension scheme. On the basis of the same reasoning it may be said that any modification with respect to the other determinative factor, namely, qualifying service made with a view to make it more beneficial in terms of quantum of pension can also be regarded as liberalisation or upward revision of the existing pension scheme. If, however, the change is not confined to the period of service but extends or relates to a period anterior to the joining of service then it would assume a different character. Then it is not liberalisation of the existing scheme but introduction of a new retiral benefit. What has been done by amending Rule 16 is to make the period of practice at the Bar, which was otherwise irrelevant for determining the qualifying service, also relevant for that purpose. It is a new concept and a new retiral benefit. The object of the amendment does not appear to be to go for liberalisation. The purpose for which it appears to have been made is to make it more attractive for those who are already in service so that they may not leave it and for new entrants so that they may be tempted to join it. Though Rule 16 does not specifically state that the amended rule will apply only to those who retired after 22.2.1990, the intention behind it clearly appears to be to extend the new benefit to those only who retired after that date. For these reasons the principle laid down in D.S.Nakara case that if pensioners form a class computation of their pension cannot be by different formula affording unequal treatment merely on the ground that some retired earlier and some retired later, will have no application to a case of this type. Therefore, on both the grounds the High Court was in error in applying the ratio of the decision in D.S.Nakara case to this case. As rightly contended on behalf of the State, benefit of the amendment would be available to only those direct recruits who retired after it has come into force."

The Supreme Court referred to D.S.Nakara and held that any modification with respect to qualifying service made with a view to make it more beneficial in terms of quantum of pension can be regarded as liberalisation upward revision of the existing pension scheme. However dealing with the facts of the case in Justice S.S.Dewan (Retired Chief Justice) observed that the change was not confined to the period of service but extended to a period anterior to the joining of service and therefore, it was not liberalisation of the existing scheme but introduction of the new retiral benefits. That was a case where for the first time a provision was made by which period of practice at the Bar upto 10 years was treated as qualifying service. There was the new retiral benefit and held to be so by the Supreme Court. In so far as Rule 48-B is concerned, it provides for addition of five years qualifying service by way of weightage subject to the conditions mentioned in Rule 48-B which is nothing but liberalisation of upward revision of existing pension scheme as qualifying service is being modified to make it more beneficial.

20. In view of what we have discussed above, no interference is called for in the judgment of the Central Administrative Tribunal.

21. The writ petition, accordingly, fails and is dismissed with costs that we quantify at Rs.5000/-.

The interim order stands vacated.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)